Section 32 Evidence Ordinance regulates the relevancy of statements written or verbal of a person who is dead. As deceased on 10th January, 1932, had not received the injuries which terminated in her death, her complaint is not relevant under Section 32 Evidence Ordinance.

Section 14, illustrations (i) and (o) Evidence Ordinance, shew that the fact that appellant had tried to misbehave with deceased and wanted to stab her on 10th January, 1932, is relevant as showing appellant's intention towards deceased.

By Section 8.....the conduct of any person an offence against whom is the subject of any proceeding is relevant if such conduct influences or is influenced by any fact in issue or relevant fact and whether it was previous or subsequent thereto. Explanation 1. The word "conduct" in this Section does not include statements, unless these statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other Section of this act.

Appellant's dealing with deceased drove deceased to lodge and sign a report at the police station against him. The statement then recorded explains her action, and becomes relevant: I am of opinion that the report was rightly admitted in evidence under Section 8.

The learned Judge then proceeded to deal with the remainder of the case.

Appeal dismissed.

[ORIGINAL CIVIL JURISDICTION]

GERAHTY, J. March 23, 1933.

LEE KIN ..... **Plaintiff.**

vs.

CHAN SUAN ENG.....**Defendant.**

[PERAK CIVIL SUIT No. 597 of 1932]

Mining Sub-Lease under Mining Enactment, 1911,—Effect of subsequent legislation—Mining Enactment, 1928, and Tin and Tin-ore (Restriction) Enactment, 1931.

By a sub-sub-sub-lease dated the 3rd October, 1927, the defendant sub-leased to the plaintiff certain land for a period of five years and renewals thereof subject to the provisions of the Mining Enactment, 1911.

Subsequently the Mining Enactment, 1928, and the Tin and Tin-ore (Restriction) Enactment, 1931, came into force. The former Enactment, apart from repealing the Mining Enactment, 1911, effected changes in the status of sub-sub-sub-leases, and the rules made under the latter Enactment materially affected mining operations and the interests of parties to mining leases entered into prior to it becoming law.

In an action for specific performance that the defendant should execute in favour of the plaintiff a renewal of the sub-sub-sub-lease for a period of one year: *Held*, that there was nothing in the sub-sub-sub-lease from which it appeared that the parties intended to bind themselves with reference to the future state of the law, and the presumption was that the parties intended to contract with reference to the law existing at the time the contract was made.

E. C. Watson for the plaintiff.

G. Terrell for the defendant.

Cur. Ad. Vult.

GERAHTY, J.—In this case the plaintiff claims an order for specific performance by the defendant of her obligations under a registered memorandum of sub-lease (No. 196/27 of sub-lease 112/27 of sub-lease 111/27), and dated 3rd October, 1927, to execute in favour of the plaintiff a renewal for a period of one year and alternatively for a declaration that the plaintiff shall be at liberty to work the land in terms of the said sub-sub-sub-lease for a period of one year from the date of such order.

The plaintiff further claims damages for failure to renew the sub-sub-sub-lease until the same is renewed.

The memorandum of sub-lease referred to, and marked "A" herein, contains the following covenant:—

> "I Chan Suan Eng (f) of Taiping (defendant in this suit) hereinafter called the sub-sub-lessor
>
> "Do hereby sub-sub-lease to Lee Kin of Kampar (plaintiff in this suit) hereinafter called the sub-sub-lessee all that portion....., for the period of five (5) years and renewals thereof subject to the provisions of 'The Mining Enactment, 1911,' and to the following conditions," etc.

The first question to be considered is what is the construction to be given to the words " and renewals thereof." In my view these words when read with the words " for the period of five years," immediately preceding them must be construed to refer and to have been intended by the parties to refer, to renewals for further periods of five years at the option of either of them, subject always to the continued operation of the head lease, Exhibit "D" in this suit.

On this construction then the plaintiff would be entitled to a renewal of the sub-sub-sub-lease for a further period of five years as from the 3rd October, 1932, subject to the provisions of "The Mining Enactment, 1911," and to the conditions, restrictions and exceptions contained in the memorandum.

The further question then arises as to whether on the 3rd October, 1932, it was possible for the defendant to perform her obligations on the covenant to renew the registered sub-sub-sub-lease on the terms and conditions contained in the memorandum. It cannot be disputed that the terms and conditions of the contract made

between the parties in 1927 have been materially affected by the passing of the Mining Enactment, 1928, which repeals the Mining Enactment, 1911, under the provisions of which the sub-sub-sub-lease was made, and of the Tin and Tin-ore (Restriction) Enactment, 1931. Section 2 (ii) of the Mining Enactment, 1928, provides for the saving of existing rights as follows:—

> "Nothing in this Enactment shall invalidate any title to occupy land for mining purposes lawfully given under any repealed Enactment or in the absence of an express provision in that behalf abrogate any of the rights or privileges expressly conferred thereby; provided that every such title, right or privilege shall be limited to the extent prescribed by the Enactment under or by virtue of which the same was granted or conferred: and provided further that, save as by such title or Enactment is expressly otherwise provided, it shall be incumbent upon a lessee or occupier of the said land to hold and mine the same in accordance with the covenants and conditions set forth in this Enactment, and in all respects as if his title to occupy the same were a lease issued under this Enactment."

The Tin and Tin-ore (Restriction) Enactment, 1931, it is to be observed, does not make provision for the saving of existing rights under the "Mining Enactment, 1928." yet the Rules made in pursuance of the Tin and Tin-ore (Restriction) Enactment, 1931, have necessarily materially affected mining operations and the interests of parties to mining leases entered into prior to the passing of the Enactment. Apart from this Enactment and the Rules made thereunder, the Mining Enactment, 1928, has also effected changes in the law and in particular as to the status of sub-sub-sub-leases. In the present case the plaintiff seeks to compel the defendant to renew for a period of one year only (this period being fixed to meet certain requirement of the Mining Enactment, 1928), a sub-sub-sub-lease entered into before the passing of the Mining Enactment, 1928, and the Tin-ore (Restriction) Enactment, 1931. He is seekig to compel the defendant to renew a contract under conditions which have materially changed by subsequent legislature since that contract was entered into—in effect he is endeavouring to force the defendant to enter into an entirely new contract.

Mr. E. C. Watson for the plaintiff contends that there is a concluded contract and that at the time the contract was made both parties thereto intended that there should be a renewal. With this contention I agree, but obviously the subsequent initiation of legislature which materially affects mining conditions then existing and materially affects the terms of their contract could not have been in the minds of the parties in 1927. As Mr. George Terrell for the defendant puts it, the parties may have been *ad idem* in 1927, but they must have ceased to be so after the passing of the Mining Enactment in 1928.

In 1927 the parties contracted to sub-sub-sub-lease certain mining land "for the period of five years and renewals thereof" subject to the provisions of the Mining Enactment, 1911. It is clear in my opinion that the performance of this covenant to renew has been rendered impossible by the subsequent legislation and that the defendant is excused in law from performing her promise.

There is nothing in the document in question from which it appears that the parties intended to bind themselves with reference to the future state of the law, the presumption is that the parties intended to contract with reference to the law existing at the time when the contract was made. See 7 Halsbury's Laws of England, p. 431, para 881 and cases cited thereunder and Section 56 of the Contract Enactment, 1899.

It appears to me that these are the only points which it is necessary for me to go into. For the reason given I am of opinion that the plaintiff's claim should be dismissed and judgment will be entered for the defendant with costs.

Judgment accordingly.

[APPELLATE CIVIL JURISDICTION]

TERRELL, Ag. C.J., WHITLEY and GERAHTY, JJ. June 10, 1933.

THE KWONG YIK (SELANGOR) BANKING CORPORATION, LTD. — Plaintiffs Appellants

vs.

1. THE MALAYAN DAILY EXPRESS (1926), LTD.
2. YAP YOW CHING
3. K. ARUMUGAM
4. LOH KIM SWI
5. M. CUMARASAMI

— Defendants Respondents

[SELANGOR CIVIL APPEAL No. 9 of 1933]

Limitation—bankers—overdraft—guarantee—Limitation Enactment, Sec. Schedule, Art. 95.

A Company, being short of funds, made an arrangement with the plaintiff bank whereby it was allowed to overdraw from time to time. Such overdraft was covered by a guarantee in writing by which the guarantors guaranteed the payment "of all moneys which may at any time be due to you from the firm on the general balance of its account with you." It was also provided by the same instrument that the guarantee should be a continuing one to the extent of $40,000 and should be applicable "to the whole ultimate balance that may become due to you from the firm." Upon one of the